Doc Code: AP.PRE.REQ

PTO/SB/33 (01-09)
Approved for use through 02/28/2009. OMB 0651-0031
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)
1089.0560000/MAC/JHH

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]

on _____

Signature _____

Typed or printed name _____

Application Number	Filed
10/533,875	May 5, 2005 (371(c) Date)

First Named Inventor: Mitsutoshi SHIONOYA

Art Unit	Examiner
3621	Mamon A Obeid

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor.

☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

☒ attorney or agent of record.
Registration number 58,010.

☐ attorney or agent acting under 37 CFR 1.34.
Registration number if acting under 37 CFR 1.34 _____

Signature

John T. Haran
Typed or printed name

(202) 371-2600
Telephone number

June 18, 2009
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below*.

☒ *Total of 1 forms are submitted.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:	Confirmation No.: 8000
SHIONOYA *et al.*	Art Unit: 3621
Appl. No.: 10/533,875	Examiner: Mamon A Obeid
371(c) Date: May 5, 2005	Atty. Docket: 1089.0560000/MAC/JHH
For: **Viewing Management Method of Specified Content Recorded on Information Recording Medium**	

Arguments to Accompany the Pre-Appeal Brief Request for Review

Mail Stop AF

Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Sir:

Applicants hereby submit the following Arguments, in five (5) or less total pages, as attachment to the Pre-Appeal Brief Request for Review (Form PTO/SB/33). A Notice of Appeal is concurrently filed.

Summary of Request

The February 18, 2009 Final Office Action rejected claims 1-3 and 5-8 under 35 U.S.C. § 103(a) as being allegedly unpatentable over U.S. Patent No. 6,799,277 to Colvin ("the Colvin patent") in view of U.S. Patent No. 6,631,359 to Braitberg *et al.* ("the Braitberg patent") and further in view of U.S. Patent No. 5,581,547 to Umeda *et al.* ("the Umeda patent").[1] This rejection is improper. The Examiner has failed to establish a *prima facie* case of obviousness based upon these references. Without more evidence of unpatentability, Applicants are entitled to grant of a patent. *In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992).

---

1 Claim 8 was also rejected under 35 U.S.C. § 101 and 35 U.S.C. § 112. However, in the Advisory Action of May 27, 2009 the Examiner indicated that the after final amendment of claim

Arguments

As discussed on page 9 of the Amendment and Reply filed May 18, 2009, the Umeda patent is nonanalogous art because the Umeda patent is neither in the field of Applicants' endeavor, nor pertinent to the particular problem with which the inventor was concerned. Accordingly, it is not proper to combine the disclosure of the Umeda patent with those of the Colvin patent and the Braitberg patent. Each of independent claims 1, 3, and 8 includes a method of or control program for presenting an acquisition code corresponding to a random number generated according to a prescribed random function.

- Independent claim 1, recites "a viewing management method" wherein "the step of presenting the acquisition code occurs each time a content reproduction request is received from the viewer and includes: said prescribed reproduction device generating a random number based on a prescribed random function; and said prescribed reproduction device selecting and presenting an acquisition code corresponding to the generated random number from the password management table."

- Independent claim 3 recites "a viewing management method" wherein "said prescribed reproduction device presents an acquisition code corresponding to a random number generated according to a prescribed random function."

- Independent claim 8 recites "a system for reading an information recording medium with a prescribed reproduction device" wherein "said prescribed control information contains a control program for said prescribed reproduction device to be capable of performing a plurality of functions, the functions comprising: a function capable of presenting a prescribed acquisition code corresponding to a random number generated according to a prescribed random function to said viewer and urging said viewer to input a prescribed password associated with said presented prescribed acquisition code in said prescribed password management table."

None of the Colvin patent, the Braitberg patent or the Umeda patent, either alone or in combination, disclose or suggest the invention claimed in independent claims 1, 3, and 8.

The Colvin patent is directed to a system and method for monitoring software usage. As shown for example in FIG. 14a, the Colvin patent discloses the sequential steps of generating an

---

8 filed on May 18, 2009 overcame these rejections of claim 8 and that, for the purposes of

activation key (step 652), then creating a random encryption key for each activation key (step 654), and then encrypting a password and random number with the encryption key for each activation key (step 656). The Braitberg patent is directed to a writeable access medium control using a medium writable area and does not disclose or suggest presenting an acquisition code based on a random number generated by a random function.

The Examiner is correct in recognizing that a combination of the Colvin patent and the Braitberg patent does not disclose selecting and presenting an acquisition code corresponding to the generated random number from a password management table. Office Action at paragraph 12. The Examiner appears to rely on the disclosure of the Umeda patent as suggesting the deficiencies of the Colvin patent and the Braitberg patent. As pointed out by the Examiner in paragraph 23 of the Office Action mailed February 18, 2009, in order for a prior art reference to be relied upon as a basis for rejection of the claimed invention, it must either be in the field of Applicants' endeavor, or reasonably pertinent to the particular problem with which Applicants are concerned. The Umeda patent in combination with the Colvin patent is neither in the field of Applicants' endeavor, nor reasonably pertinent to the particular problem with which Applicants' are concerned as shown in the detailed chart below.

	Present Invention	**The Colvin Patent**	**The Umeda patent**
Technical Field	The technical field for the present invention is directed to techniques for management of content viewing. See paragraph [0001].	The technical field for the Colvin patent is directed to techniques for management (e.g. monitoring, testing, distribution, and use) of software. See col. 1, lines 20-26.	The technical field for the Umeda patent is directed to CDMA (code division multiple access) random access communication techniques. See col. 1, lines 6-11.

appeal, the amendment of claim 8 would be entered.

Problems of Concern	The present invention is concerned that general DVD players on the market were not able to realize the mechanism or function for performing a more detailed viewing management. Further to incorporate a new scheme for performing viewing management in general DVD players was unrealistic considering the compatibility with many of the DVD players on the market and the restrictions of giving utmost concern to the specification. See paragraph [0006].	Prior art methods for reducing unauthorized use of software imposed a significant burden on authorized users when they purchased and used the software. See col. 2, lines 29-36.	When a plurality of mobile stations uses the same spreading code at the same frequency until the end of communication, signals sent from the mobile stations clash with each other and it is very likely that the received signals overlap in the base station, resulting in a substantial reduction of the through put. Namely, when the spreading code is assigned to the control channel, the number of mobile stations that can be controlled, that is, the control capacity, is small, and when the spreading code is used for packet signal transmissions, the channel capacity is small. See col. 2, line 59 to col. 3, line 2.
Definitions of: Acquisition code Activation key Spreading Code	The "acquisition code" in the present invention is a reference code for acquiring a password in a table." The "acquisition code" is randomly selected for each reproduction request, in order to solve the problem of the same "acquisition code" being used for different reproduction requests (i.e. at different times), regardless of whether	The "activation key" in the Colvin patent is key information required to be input at the time of installing software, and it is not a reference code for acquiring certain information. The "activation key" in the Colvin patent is not determined randomly.	The "spreading code" in the Umeda patent is a code sequence by which the original signal is multiplied so as to spread the signal in a wider band, and it is not a reference code for acquiring certain information. The "spreading code" in the Umeda patent is randomly selected for each mobile station, or for each message in order to solve the problem of the same "spreading code" being used in different mobile

	the same code is used by the same or different users.		stations at the same time.

As noted above, the present invention is directed to techniques for management of content viewing, whereas the Umeda patent is directed to CDMA communication techniques. Accordingly, the Umeda patent is not directed to the same field of endeavor of the present invention. Further, the present invention is concerned at least with the problem of implementing viewing management on all DVD players and accomplishes this by use of an acquisition code that is used to acquire a password in a table and is randomly generated to prevent the same acquisition code from being used for different reproduction requests (i.e. at different times). On the other hand, the Umeda patent is concerned with preventing clashing of signals and accomplishes this by use of a spreading code by which a code sequence by which an original signal is multiplied so as to spread the signal, and the spreading code is randomly selected in order to solve the problem of the same spreading code being used in different mobile stations at the same time. Accordingly, the Umeda patent is not reasonably pertinent to the particular problem with which present invention is concerned. Therefore, the Umeda patent is non-analogous art and is improper to combine with disclosure of the Colvin patent and the Braitberg patent. For at least the reasons noted above, the Examiner has failed to establish a *prima facie* case of obviousness. Accordingly, claims 1-3 and 5-8 should be allowed.

Respectfully submitted,

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.

John T. Haran
Attorney for Applicants
Registration No. 58,010

Date: June 18, 2009

993644_1.DOC